

Spence Law Office, P.C.

Robert J. Spence, Esq.
Proposed Attorneys for the Debtors
and Debtors-in-Possession
55 Lumber Road, Suite 5
Roslyn, New York 11576
Tel.:(516) 336-2060

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

In re:

Chapter 11

4D Factory Inc., *et al.*,

Case No. 23-11618 MEW
(Subchapter V Cases)

Debtors.¹

(Jointly Administered)

-----X

APPLICATION FOR RETENTION OF COUNSEL FOR DEBTOR

**TO: THE HONORABLE MICHAEL E. WILES
UNITED STATES BANKRUPTCY JUDGE:**

The application of the 4D Factory, Inc. et al., the debtors and debtors-in-possession herein
(the “Debtors” or “Applicants”), respectfully allege:

1. The Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code on October 10, 2023 (the “Filing Date”).
2. The Debtors are continuing to manage and operate their business as debtors in possession pursuant to section 1184 of the Bankruptcy Code.
3. Charles Persing has been appointed as the Subchapter V Trustee in these cases.

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, are 4D Factory Inc. (6770), and The 4D Factory LLC’s (8935).

4. This Application is submitted, pursuant to 11 U.S.C. Sections 327(a), Rule 2014 of the Federal Rules of Bankruptcy Procedure, and Rule 2014-1 of the Local Rules of the United States Bankruptcy Court for the Southern District of New York, in support of the annexed pre-fixed proposed order authorizing Applicants to employ the law firm of Spence Law Office, P.C., to represent the Debtors in the above-captioned Chapter 11 cases.

5. The Debtors have selected Spence Law Office, P.C. (the “Firm”) for the reason that it believes the Firm to be well qualified to represent them as debtors-in-possession in these proceedings. The Firm is a law firm with considerable experience in bankruptcy matters. The Firm’s attorney(s) have served as counsel in numerous bankruptcy cases, representing the interests at different times of chapter 11 debtors in possession; bankruptcy trustees; and secured and unsecured creditors in all types of bankruptcy cases.

6. The professional services that will be rendered in this proceeding are as follows:

- (a) assisting the Debtor in preparing and filing (and serving as necessary) its petition, schedules, statement of financial affairs, monthly financial statements, and other necessary and appropriate documents;
- (b) preparing and filing, on behalf of the Debtor, all motions, applications, documents in connections with adversary proceedings, and proposed orders or other legal papers;
- (c) representing the Debtor at all Section 341 meetings and other meetings, and before this Court, and to represent the Debtor in all matters pending before said Court;
- (d) explaining to the Debtor its responsibilities in a case under chapter 11, and ensuring insofar as practicable that it complies with its responsibilities;
- (e) representing the Debtor in its negotiations with secured and unsecured creditors;
- (f) assisting the Debtor in formulating a plan of reorganization; and
- (g) performing such other further legal services for the Debtor which may be necessary herein.

7. The terms of the employment of the Firm, agreed to by the Debtors, subject to the approval of the Court, are at the following hourly rates:

Members of the Firm	\$485.00 hourly
Associates/of Counsel	\$275.00-\$475.00 hourly, depending on experience
Paralegals	\$125.00 hourly, depending on experience

These hourly rates are subject to periodic adjustments to reflect economic and other conditions.

8. Prior to the Filing Date, the Firm received an advance fee retainer in the amount of \$35,214.00, which was provided by the Debtor, The 4D Factory, LLC (\$10,000) and The 4D Factory LLC's Managing Member, Cort Javarone (\$25,214).

9. The Debtors desire to employ Spence Law Office, P.C. under an advance retainer because of the extensive legal services required.

10. To the best of Applicants' knowledge, information and belief, Spence Law Office, P.C., represents no interest adverse to the Debtors or their estates, and is a "disinterested person" as that term is defined by 11 U.S.C. Section 101(14).

11. To the best of Applicants' knowledge, information and belief, Spence Law Office, P.C. has no connection with the Debtors, their creditors, or any other parties in interest, or their respective attorneys and accountants.

12. The Debtors understand that Spence Law Office, P.C. will apply to the Court for allowance of compensation and reimbursement of expenses in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules for the Southern District of New York (the "Local Rules"), the guidelines (the "Guidelines") established


by the United States Trustee for the Southern District of New York (the “U.S. Trustee”), and further orders of this Court (“Orders”) for all services performed and expenses incurred after the Petition Date.

13. No previous application for the relief sought herein has been granted by this or any other Court.

WHEREFORE, Applicants respectfully request that they be authorized to employ to Spence Law Office, P.C. to represent the Debtors in these proceedings under Chapter 11 of the United States Bankruptcy Code, and that the Court grant such other and further relief as this Court deems just and proper.

Dated: New York, New York
November 16, 2023

4D FACTORY, INC.
THE 4D FACTORY LLC

By: 
Name: Cort Javarone
Titles: President of 4D Factory Inc.
Managing Member of The 4D Factory LLC

Spence Law Office, P.C.

Robert J. Spence, Esq.
Proposed Attorneys for the Debtors
and Debtors-in-Possession
55 Lumber Road, Suite 5
Roslyn, New York 11576
Tel.:(516) 336-2060

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

In re:

Chapter 11

4D Factory Inc., *et al.*,

Case No. 23-11618 MEW
(Subchapter V Cases)

Debtors.¹

(Jointly Administered)

-----X

AFFIRMATION OF PROPOSED ATTORNEY

ROBERT J. SPENCE, an attorney duly admitted to practice in the Southern District of New York, affirms the following under penalties of perjury:

1. I am the managing attorney of Spence Law Office, P.C., and am an attorney and counselor at law.
2. The firm of Spence Law Office, P.C. (the “Firm”) maintains an office for the practice of law at 55 Lumber Road, Suite 5, Roslyn, New York 11576.
3. The Firm has no connection with 4D Factory Inc. or The 4D Factory LLC, the debtors and debtors-in-possession (the “Debtors”), their creditors, the Bankruptcy Judge assigned

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, are 4D Factory Inc. (6770), and The 4D Factory LLC’s (8935).

to these cases, persons in the Judge's Chambers, the Subchapter V Trustee, the United States Trustee or any person in the Office of the United States Trustee, or any other party in interest herein except as otherwise set forth herein.

4. The Firm represents no interest adverse to the Debtors or their estates in the matters upon which the Firm is to be engaged, and the Firm is a disinterested person as such term is defined in 11 U.S.C. §101(14).

5. Counsel has read and is generally familiar with: (1) the Bankruptcy Reform Act of 1978; (2) the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005; (3) The Bankruptcy Rules; (4) The Operating Guidelines of the United States Trustee; and (5) the Local Rules of the United States Bankruptcy Court for the Southern District of New York.

6. Applicants' attorneys have served as counsel in numerous bankruptcy cases, representing the interests at different times of chapters 11 debtors in possession; bankruptcy trustees; and secured and unsecured creditors. Counsel has represented Debtors in Possession in numerous Chapter 11 cases in the Eastern and Southern Districts of New York, many of which cases have been confirmed or otherwise successfully administered.

7. Accordingly, proposed counsel respectfully submits that it is competent to represent the Debtor in all proceedings now pending or which may reasonably be expected to be pending in the foreseeable future in this Court, and in furtherance of Debtor's duties as set forth in 11 U.S.C. §§1107 and 1108.

8. The Firm's hourly charge for the performance of legal services is as follows: (i) members of the Firm, \$485.00 hourly, (ii) associates and of counsel, \$275.00 - \$450.00 hourly;

and (iii) paralegals, \$125.00 hourly. These rates are subject to increase, from time to time, in the ordinary course. In addition to the foregoing hourly rates, the Firm will seek reimbursement of all reasonable costs, advances and out-of-pocket expenses incurred by the Firm that are directly related to the performance of such legal services, including, but not limited to, service of process, filing fees, court costs, deposition transcripts, travel, photocopying, long distance telephone calls, facsimile machine transmissions and all other out-of-pocket expenses.

9. The Firm has received an advance fee pre-petition retainer in the aggregate amount of \$35,214 which was paid by the Debtor The 4D Factory, LLC (\$10,000) and Cort Javarone (\$25,214).

WHEREFORE, it is respectfully requested that the Firm's retention as general counsel for the Debtors be approved by this Court, as of October 10, 2023.

Dated: Roslyn, New York
November 16, 2023

SPENCE LAW OFFICE, P.C.
Proposed Counsel for the Debtor

/s/Robert J. Spence
Robert J. Spence, Esq. (RS3506)
55 Lumber Road, Suite 5
Roslyn, New York 11576
Tel.: (516) 336-2060

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

In re:

Chapter 11

4D Factory Inc., *et al.*,

Case No. 23-11618 MEW
(Subchapter V Cases)

Debtors.¹

(Jointly Administered)

-----X

**“LAR-DAN” DECLARATION IN CONNECTION WITH
RETENTION OF SPENCE LAW OFFICE, P.C.**

Cort Javarone, declares under the penalty of perjury pursuant to the provisions of 28 U.S.C.

§ 1746 that the following statements are true and correct:

1. I am the President of 4D Factory Inc. and the Managing Member of The 4D Factory, LLC.

2. I submit this Declaration in connection with Debtors’ application to retain firm of Spence Law Office, P.C. as counsel for the Debtors.

3. As disclosed in the Application for Retention Spence Law Office, P.C. received a retainer in the sum of \$35,214 prior to the filing of the bankruptcy cases. The retainer was paid in part by The 4D Factory, LLC (\$10,000) and in part by myself (\$25,214).

4. I hereby irrevocably waive any right to recover from Debtor the \$25,214 that I advanced to Spence Law Office, P.C. on behalf of Debtors. It should be noted that \$20,000 of these funds were advanced to me to pay the retainer for the Debtors.

5. I understand and acknowledge that, with regard to the matters which Spence Law

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, are 4D Factory Inc. (6770), and The 4D Factory LLC’s (8935).

Office, P.C. is to be engaged in these Chapter 11 proceedings, the firm is responsible for the interests of the Debtors and not my interests. I further expressly acknowledge that Spence Law Office, P.C. owes a duty of loyalty to the Debtor only and not to me.

Dated: New York, New York
November 16, 2023

By: 
Cort Javarone

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

In re:

Chapter 11

4D Factory Inc., *et al.*,

Case No. 23-11618 MEW
(Subchapter V Cases)

Debtors.¹

(Jointly Administered)

-----X

**ORDER FOR RETENTION OF
ATTORNEYS FOR DEBTORS-IN-POSSESSION**

UPON the application (the “Application”) of 4D Factory, Inc. and The 4D Factory LLC the debtors and debtors-in-possession (the “Debtors”), dated November 16, 2023, seeking authority to employ and appoint Spence Law Office, P.C. (“Spence Law”) as their general counsel in these chapter 11 cases, under a general retainer, to represent the Debtors in the fulfillment of their duties, as set forth in 11 U.S.C. §§1107 and 1108, as of the date of the voluntary commencement of these cases, October 10, 2023, upon the terms and conditions set forth in the Application; and upon the Affirmation of Robert J. Spence, Esq., the president and principal attorney of the Law Firm of Spence Law, and it appearing that Spence Law is duly authorized to practice in this Court, and the Court being satisfied that Spence Law represents no interests adverse to the Debtors or to the Debtors’ estates in the matters upon which it is to be engaged, is a disinterested person, and that its employment is necessary and would be in the best interest of the estates; it is hereby

ORDERED that the Application is granted as set forth herein; and it is further

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, are 4D Factory Inc. (6770), and The 4D Factory LLC (8935).

ORDERED that, pursuant to § 327(a) of the Bankruptcy Code, the Debtor is authorized to retain Spence Law Office, P.C. as its attorneys in this case, as of October 10, 2023; and it is further

ORDERED that the compensation and reimbursement of expenses of Spence Law Office, P.C. shall be sought upon, and paid only upon an order granting, a proper application pursuant to §§ 330 and 331 of the Bankruptcy Code, as the case may be, and the applicable Bankruptcy Rules, Local Rules and fee and expense guidelines and orders of this Court; and it is further

ORDERED that at least ten days before implementing any increase in the rates of Spence Law Office, P.C.'s professionals providing services in these cases, Spence Law Office, P.C. shall file and serve on the United States Trustee and any official committee a supplemental affidavit providing justification for any such rate increases and stating whether the Debtors have agreed to them. All parties in interest retain the right to object to any rate increase on any grounds; and it is further

ORDERED that the Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order; and it is further

ORDERED that if there is any inconsistency between the terms of this Order, the Application, and the supporting Affirmation, the terms of this Order shall govern.

NO OBJECTION:

By: _____
For the Office of the U.S. Trustee